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In the Supreme Court of the United States

October Term 1968
No. 34

ROGER A. REYNOLDS, MAYER I. BLUM, HERBERT R. CAIN, JR., KATHERINE M. KALLICK, ROSALIE KLEIN, ALFRED J. LAUPHEIMER, EDWARD O'MALLEY, JR., NORMAN SILVERMAN, JULIA L. RUBEL, Constituting the Philadelphia County Board of Assistance, WILLIAM P. SAILER, Its Executive Director, MAX D. ROSENN, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, WILLIAM C. SENNETT, Attorney General of the Commonwealth of Pennsylvania,

Appellants

v.

JUANITA SMITH, Individually, and by Her, Her Minor Children, JOHN SMITH, TABITHA MILLER, SOPHIA PAYNTER, WILLIAM PAYNTER, VONCELL PAYNTER, and on Behalf of All Others Similarly Situated

and

JOSE FOSTER, Individually, and by Her, Her Minor Children, JEANETTE FOSTER, ANNIE BEA FOSTER, WILLIAM FOSTER, FRANCES FOSTER,

Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania

SUPPLEMENTAL BRIEF FOR APPELLANTS ON REARGUMENT

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INTRODUCTION

The Supplemental Brief for Appellees purports to draw together for Cases No. 9, No. 33, and No. 34[1] the arguments originally presented to the Court separately by the various appellees.

Section I of the Brief restates the arguments previously presented to support the conclusion that the one-year residence requirement for public assistance violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Appellants have fully argued their position supporting the opposite conclusion in their original brief to this Court, and here reaffirm the arguments and conclusions therein set forth.

Section II of Appellees' Supplemental Brief argues that there is no congressional authorization to the states for the durational residence requirements in question. Appellants will show that this is categorically false. Appellees further argue that if there is such congressional authorization, it has no significance for these cases. Appellants will show that Congress has repeatedly and specifically authorized the states to impose durational residence requirements and that this has the following impact on these cases:

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[1] *Shapiro v. Thompson*, No. 9; *Washington et al. v. Legrant et al.*, No. 33; and *Reynolds et al. v. Smith, et al.*, No. 34.

(1) The state law providing for durational residence requirements in accordance with federal law cannot be validly attacked as unreasonable;

(2) The state law cannot be struck down without a holding that the federal law, pursuant to which the state law was enacted, is unconstitutional.

SUMMARY OF ARGUMENT

The Pennsylvania state law imposing a one year residence requirement for public assistance was enacted pursuant to specific authorization therefor in federal law.

The classification between persons who have, and persons who have not, resided in Pennsylvania for one year cannot be unreasonable within the meaning of the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution where Congress has expressly authorized the states to establish such classification. It cannot be unreasonable for the states to do what Congress has specifically authorized them to do.

The classification in the state law can only be held unreasonable derivatively, that is, to the extent that the federal statutory authorization is unreasonable.

Therefore, the constitutionality or unconstitutionality of the state law is contingent upon the constitutionality or unconstitutionality of the parent federal law.

ARGUMENT

THE CONGRESSIONAL AUTHORIZATION TO THE STATES FOR DURATIONAL RESIDENCE REQUIREMENTS FOR PUBLIC ASSISTANCE NEGATES THE ARGUMENT THAT IMPOSITION OF SUCH RESIDENCE REQUIREMENTS BY THE STATES IS ARBITRARY, CAPRICIOUS OR UNREASONABLE

A. Congress, by Section 402(b) of the Social Security Act, Has Authorized the States To Impose a Residence Requirement of Up to One Year in Duration With Respect to the AFDC Program

Congress has repeatedly and in specific terms authorized the states to impose durational residence requirements for the federal-state public assistance programs.

For aid to families with dependent children (AFDC), Congress has specifically authorized the states to impose a residence requirement of up to one year:

Section 402 of Title IV of the Social Security Act, as amended, provides, *inter alia:*

> (b) The Secretary shall approve any plan which fulfills the conditions specified in subsec-

> tion (a) of this Section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.
>
> 49 Stat. 627 (1935), as amended, 42 U.S.C. §602(b).

Congress has included the following provisions with regard to the allowance of residence requirements under the other categorical assistance programs embodied in the Social Security System. For Old Age Assistance, Aid to the Blind, and Aid to the Disabled, Congress has specifically authorized a residence requirement of up to five during the last nine years as well as up to one year immediately preceding application:

Old Age Assistance (Title I):

Section 2 of Title I of the Social Security Act, as amended, provides,

> (b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application.

. . .

49 Stat. 620 (1935), as amended, 42 U.S.C. §302(b)(2).

Aid to the Blind (Title X)

Section 1002 of Title X of the Social Security Act, as amended, provides,

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application . . . .

49 Stat. 645 (1935), as amended, 42 U.S.C. §1202(b)(1).

Aid to the Disabled (Title XIV)

Section 1402 of Title XIV of the Social Security Act, as amended, provides,

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsec-

tion (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application . . .

64 Stat. 555 (1950), as amended, 42 U.S.C. §1352(b)(1).

Aid to the Aged, Blind, or Disabled (Title XVI)

Section 1602 of Title XVI of the Social Security Act, as amended, provides,

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(2) any residence requirement which (A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application. . .

76 Stat. 200 (1962), as amended, 42 U.S.C. §1382(b)(2).

Federal grant programs under Titles I, IV and X were established by the Social Security Act of 1935. Authorization of limited durational residence requirements under these categories was recommended by the President's Committee on Economic Security,[2] and embodied in both the original House[3] and Senate[4] versions of the Act. The programs under Title XIV and Title XVI were added in 1950 and 1962, respectively, each authorizing durational residence reports from the outset.

This shows clearly that Congress knew what it was doing; time and again it specifically authorized the states to impose for the different programs such durational residence requirements as it deemed reasonable.

Furthermore, with respect to medical assistance for the aged and the subsequent medical assistance programs, Congress specifically prohibited the states from imposing durational residence requirements, showing clearly that when Congress wishes to exclude such provisions, it does so in unmistakable terms.

Those programs dealing with medical assistance, established in 1960 (Title I), 1962 (Title XVI), and 1965 (Title XIX), forbid the imposition of any durational residence requirements; thus indicating that

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[2] See Hearings on H.R. 4120 before the House Committee on Ways and Means, 74th Cong., 1st Sess., 41,161 (1935) Aid to the blind under Title X was first introduced in the Senate version of the Social Security Bill. See S. Rep. No. 627, 74th Cong., 1st Sess. (1935).

[3] H. Rep. No. 615, 74th Cong., 1st Sess. 1935.

[4] S. Rep. No. 627, supra.

when Congress wishes to exclude such provisions, it does so in unmistakable terms.

Medical Assistance for the Aged (Title I and Title XVI)

Section 2 of Title I and Section 1602 of Title XVI of the Social Security Act, as amended, provide,

> (b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—
>
> (2) any residence requirement which . . . (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State . . . .

49 Stat. 620 (1935), added by 74 Stat. 987 (1960), as amended, 42 U.S.C. §302(b)(2); 76 Stat. 200 (1962), as amended, 42 U.S.C. (1382) (b)(2).

Medical Assistance (Title XIX)

Section 1902 of Title XIX of the Social Security Act, as amended, provides,

> (b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this Section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

> (3) any residence requirement which excludes any individual who resides in the State . . . .
>
> —79 Stat. 349, 42 U.S.C. §1396a(b)(3) (Supp. I, 1965).

No amount of rhetoric can disguise the fact that Pennsylvania's one-year residence requirement for public assistance is clearly and expressly authorized by Congress.

Appellees argue that the maximum period allowed for such residence requirements by Congress is less than many states had previously provided for under their own programs; that the manifest congressional intent was thus to cut down, rather than impose, durational residence requirements. And that, accordingly, the legislation in question represents a limitation on, rather than an authorization to, the states.

These terms have no mutually exclusive significance. Whatever is within the confines of a limitation is authorized. Moreover, if indeed Congress was concerned about the unreasonableness of existing residence requirements, it squarely faced the question of reasonableness by including the Social Security Act provisions in question. And it resolved that issue by unequivocally providing, with respect to AFDC, that a residence requirement of up to one year would not be unreasonable.

Appellees contend that, "No inference of affirmative congressional sanction can be drawn from the recital that the Secretary 'shall approve any plan which fulfills the conditions specified in subsection (a).' The word 'shall', despite its literal generality, will

not bear the weight of a conclusion disproved by the legislative history."

Since legislative history is resorted to only to resolve ambiguities in statutory provisions, there is no basis here for looking beyond or behind the statutory provisions themselves. Nothing on the face or in the context of these provisions mars the clarity of the term "shall". It imposes a mandate on the Secretary to approve state plans that fulfill the stated conditions and do not exceed the stated residence requirements.

Moreover, the excerpts of legislative history quoted by Appellees do not support their proposition:

79 Cong. Rec. 5470 (1935):

> These provisions are designed to liberalize the State laws. With the Federal Government bearing 50 percent of the cost, it is entirely appropriate that the States be required to modify their present long-residence requirements. These were perhaps *necessary safeguards* so long as the pensions were paid wholly from State funds, but they frequently cause considerable hardship and are unnecessary and unwise with 50 percent Federal support.

S. Rep. No. 627, 74th Cong., 1st Sess. 35 (1935); H. Rep. No. 615, 74th Cong., 1st Sess. 24 (1935):

> (b) Liberality of residence requirement: No residence requirement shall be imposed which results in the denial of aid with respect to an otherwise eligible child, if the child was born in the State within the year, or has resided in the

> State for at least a year immediately preceding the application for aid. The State may be more lenient than this, if it wishes. See, also, 79 Cong. Rec. 9268, 9285, and materials cited D.C. Brief for Appellees, pp. 56-57, n. 77.

These passages clearly reflect the view that residence requirements within the limits prescribed by the Social Security bill would be reasonable and appropriate.

Appellees contend that, "Certainly, the language is not a command to approve a plan which is patently unconstitutional, merely because it literally satisfies the only conditions stated in subsection (a) .... Congress cannot be taken to have commanded the Secretary to approve a plan which is racially discriminatory or which introduces an utterly capricious classification such as conditioning eligibility upon the month of the year in which the child was born."

This argument is entirely irrelevant to the issue before the Court. Appellees are not challenging some state-invented classification not anticipated by Congress, but a durational residence requirement expressly authorized by the Social Security Act.

B. The Congressional Authorization of Durational Residence Requirements Is a Significant Factor in Assessing the Reasonableness of Such Requirements

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States cannot be validly accused of acting arbitrarily or capriciously when they act clearly in accordance with a specific authorization of federal law. The

Commonwealth of Pennsylvania, anxious to participate in a federally funded program, can hardly be expected to make an independent determination as to the constitutionality of the federal law. Within our federal system, the duty to interpret the federal constitution and to act within its limits rests first upon Congress. Even this Court, charged with the power to review congressional enactments for compliance with the Constitution, accords those enactments a presumption of constitutionality. *Flemming v. Nestor*, 363 U.S. 603, 611. Surely state legislatures, in the absence of court decisions to the contrary, must accord congressional enactments the highest respect. It follows that state conduct within the scope of federal law cannot, in good conscience, be attacked as unreasonable without putting the federal law itself in question.

Appellants fully appreciate Appellees' attempts to persuade this Court to make new law by expanding the constitutional requirements, but Appellants find it difficult to understand Appellees' argument that the state law imposing a durational residence requirement can be struck down, while the federal law authorizing such legislation may be held to comply with the requirements of the Constitution.[5]

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[5] As a practical matter, such a result would place the federal administrator in the incongruous position of confronting an unconstitutional state plan which, in the clear language of Section 402(b), he "shall approve". If he disapproves the plan on the basis of the Court decision striking down the state legislation, he in fact takes upon himself the responsibility of concluding that the authorization contained in Section 402(b) has no legal validity. That is, he would construe the Court decision as striking down the federal as well as the state legislation.

Indeed, Appellees' "single narrow theme" running through all these cases is, of course, rather broad. The argument is, in effect, that where a state chooses to mount a program for its needy residents, it must do so for *all* its needy residents and is constitutionally barred even from defining residence durationally or otherwise restrictively.

Surely the logic of this argument hits the nerve centers of the entire categorical structure of the Social Security Act. If Congress chooses to mount a program to subsidize state programs for the needy, must this not extend to all the needy? If, in a basic needs program, all disqualifying classifications unrelated to actual need are invidious and barred by the equal protection clause, what of the needy who fall outside the federal categorical regime? Persons under 65, not blind or disabled, and who do not belong to families with dependent children, are frequently in dire need.[6]

If Appellees are correct, surely the exclusion of these needy from the federally-supported programs is arbitrary, unreasonable and constitutionally barred. Furthermore, according to Appellants' reasoning, the distinctions between the categories themselves—distinctions unrelated to actual need—must surely be invidious and unconstitutional.

If the reach of the Equal Protection Clause is broad enough to strike down Pennsylvania's durational residence requirement, it is broad enough to

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[6] In Pennsylvania, such individuals are provided for under the residual category of general assistance with state funds alone. See Section 432 of the "Public Welfare Code", 62 P.S. §432 (Cum. Ann. Pocket Pt., 1967).

condemn the entire present federal-state apparatus of public assistance, riddled as it is from end to end with distinctions and classifications unrelated to actual need.[7]

CONCLUSION

For the foregoing reasons, the defendants request the Court to declare the Act of June 24, 1937, P. L. 2051, Section 8-1, added by the Act of August 26, 1965, P. L. 389, 62 P.S. Section 2508.1, now re-enacted as Section 432 of the "Public Welfare Code", the Act of June 13, 1967, P. L. (Act No. 21), as constitutional and to deny plaintiffs any relief.

Respectfully submitted,

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[7] See, for example, Sections 1006 and 1405 of the Social Security Acts (49 Stat. 647, 42 U.S.C. §1206; 64 Stat. 555, 42 U.S.C. §1355) prohibiting aid to the blind and aid to the permanently and totally disabled, respectively, to inmates of a public institution and patients in institutions for tuberculosis or mental disease.